UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DONALD E. JOHNSON,   )
)
       Plaintiff,   )
)
    v.   )   No. 4:09CV689 AGF
)
RONALD C. NEIMAN, et al.,   )
)
       Defendants.   )

MEMORANDUM AND ORDER

This matter is before the Court upon its own motion. The Court is reviewing

Defendants Yelverton and Motley's motion for summary judgment, and the Court

believes that the motion may be granted, in part, for reasons not stated in the motion.

Plaintiff, a prisoner, brings claims against Yelverton and Motley under Title II of the

Americans with Disabilities Act ("ADA"). It appears from the complaint and the

materials provided with the summary judgment briefs that Yelverton and Motley do not

work for the State of Missouri or any agency of state or local government.

Title II of the ADA applies to "public entities." 42 U.S.C. § 12132. Under 42

U.S.C. § 12131(1), "The term 'public entity' means . . . any State or local government

[or] any department, agency, special purpose district, or other instrumentality of a State

or States or local government." The term "does not include individuals." Alsbrook v.

City of Maumelle, 184 F.3d 999, 1005 (8th Cir. 1999).

Because the term "public entity" does not apply to Defendants in their individual capacities, and because the term does not appear to apply to Defendants in their official capacities, it appears that Defendants are entitled to judgment as a matter of law on Plaintiff's ADA claims.
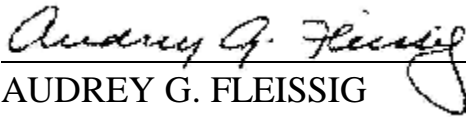
Rule 56(f) of the Federal Rules of Civil Procedure states, "After giving notice and a reasonable time to respond, the court may . . . grant the motion on grounds not raised by a party."

Accordingly,

IT IS HEREBY ORDERED that Plaintiff shall show cause no later than **April 26, 2011**, why his ADA claims against Defendants Yelverton and Motley should not be dismissed as a matter of law.

IT IS FURTHER ORDERED that any response brief must be filed no later than **May 6, 2011**.

Dated this 5th day of April, 2011.

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AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE